IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 3RD JANUARY 2007 / 13TH PAUSHA 1928

WP(C).No. 26771 of 2006(K)

PETITIONER:

P. IQBAL KAMAL, S/O. ABDULLA,
PUNATHIL HOUSE, VAKKADAPPURAM, KARAKURUSSI P.O.,
MANNARKKAD TALUK, PALAKKAD-678595.

BY ADV. SRI.K.ABDUL JAWAD
SRI.U.MUHAMMED MUSTHAFA

RESPONDENTS:

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1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

2. DEPUTY DIRECTOR OF EDUCATION,
THIRUVANANTHAPURAM.

3. DISTRICT EDUCATIONAL OFFICER,
OTTAPPALAM, PALAKKAD DISTRICT.

4. ASSISTANT EDUCATIONAL OFFICER,
CHERPULASSERY, OTTAPPALAM, PALAKKAD DISTRICT.

5. K.P. RAMA VARRIER,
MANAGER, A.U.P. SCHOOL, POMBRA,
OTTAPPALAM TALUK, PALAKKAD-678595.

6. K. MUJEEB RAHMAN,
ARABIC TEACHER, A.U.P.SCOOL, POMBRA,
OTTAPPALAM TALUK, PALAKKAD-678595.

ADDL. 7. THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM.

(ADDL. R7 IS SUO MOTU IMPLEADED AS PER JUDGMENT DATED 3.1.2007)

R1 TO R4 & ADDL. R7 BY SENIOR GOVT. PLEADER (SHRI T.T. MUHAMMED)

BY ADV. SRI.T.R.SADEESAN
SRI.K.JAJU BABU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD

ON 03/01/2007, THE COURT ON THE SAME DAY DELIVERED THE

FOLLOWING:

APPENDIX IN W.P.(C). NO. 26771 OF 2006

PETITIONER'S EXHIBITS:

EXT.P1 **TRUE COPY OF THE APPOINTMENT ORDER DT. 16.11.2000.**

EXT.P2 **TRUE COPY OF THE PETITION DATED 29.8.2006 SUBMITTED BY PETITIONER BEFORE FOURTH RESPONDENT.**

EXT.P3 **TRUE COPY OF THE LETTER DATED 3.10.2005 IN THE FORM OF A MEMO ISSUED BY 5TH RESPONDENT.**

EXT.P4 **TRUE COPY OF THE REPLY DATED 18.10.2005 SENT BY THE PETITIONER BEFORE THE MANAGER, AUP SCHOOL, POMBRA.**

EXT.P5 **TRUE COPY OF THE REPRESENTATION DATED 27.5.2006 SUBMITTED BY PETITIONER BEFORE 2ND RESPONDENT.**

EXT.P6 **TRUE COPY OF THE ORDER DATED 31.8.2006 ISSUED BY 2ND RESPONDENT.**

EXT.P7 **TRUE COPY OF THE APPOINTMENT ORDER DATED 19.6.2006.**

EXT.P8 **TRUE COPY OF THE REPLY LETTER DATED 30.6.2006 ISSUED BY PETITIONER TO THE FIFTH RESPONDENT.**

EXT.P9 **TRUE COPY OF THE NOTICE DATED 10.7.2006 ISSUED BY FIFTH RESPONDENT.**

EXT.P10 **TRUE COPY OF THE REPLY DATED 17.7.2006 SENT BY PETITIONER TO 5TH RESPONDENT MANAGER.**

<u>RESPONDENTS' EXHIBITS:</u>

EXT.R5(A) **TRUE COPY OF APPEAL MEMORANDUM SUBMITTED BY FIFTH RESPONDENT BEFORE THE DIRECTOR OF PUBLIC INSTRUCTION, TRIVANDRUM DATED 3.10.2006.**

// TRUE COPY//

PS TO JUDGE

K. M. JOSEPH, J.

W.P.C. NO. 26771 OF 2006 K

Dated this the 3rd January, 2007

JUDGMENT

Petitioner has approached this Court seeking the following reliefs:

> *"i) Call for the records leading to Exts.P1 to P10 and to issue a writ of mandamus commanding the respondents to appoint the petitioner against the regular vacancy with retrospective effect from 15.7.2005 and to release him all arrears of the benefits due.*
>
> *ii) Issue a writ of mandamus declaring the appointment of the 6th respondent as void in law and the petitioner is entitled to be appointed against the regular vacancy with retrospective effect.*
>
> *Iii) Issue a writ of mandamus commanding respondents 1 to 4 to initiate coercive action against the 5th respondent under the statutory Rules."*

2. Case of petitioner, in brief, is as follows:

Petitioner has approved service in the fifth respondent's School as evident from Ext.P1 appointment order. Based on Ext.P1 appointment order, petitioner is a Rule 51A claiment. It is stated that an additional regular post was sanctioned in the School during the year 2005 - 2006 and the 6th respondent was appointed ignoring the claim of petitioner and without following the statutory formalities. Petitioner filed Ext.P2 petition before fourth respondent. Fourth respondent rejected the approval of appointment of sixth respondent and upheld the claim of petitioner. However, there was no direction to appoint the petitioner. Fifth respondent issued a letter during the pendency of Ext.P2 petition, asking the petitioner to meet him in person with regard to the appointment to the post and he demanded money. The further case of petitioner is that he expressed unwillingness to abandon his claim. This is evident from Exts.P3 and P4. Then he preferred Ext.P5 petition before the third respondent seeking a specific direction to appoint him. Ext.P6 is the order passed by third respondent DEO, rejecting

the Appeal filed by the Manager and confirming the order of fourth respondent. It is his further case that the Manager played a tactical game to forfeit the statutory claim of petitioner. He issued an appointment order against a temporary vacancy between 5.6.2006 and 17.10.2006 purporting to be under Note 2 to Rule 51A KER. Ext.P7 is the appointment order and Ext.P8 is the reply of the petitioner. Ext.P9 is the further notice issued by the Manager. Petitioner sent Ext.P10 reply.

3. A Counter Affidavit has been filed by fifth respondent Manager, wherein it is, inter alia, stated that he has prepared a statutory Appeal before the Director of Public Instruction. Learned counsel for fifth respondent Manager would submit that it is a mistake and in fact, a Revision Petition has been preferred.

4. The Writ Petition will stand disposed of as follows:

The Director of Public Instruction has been impleaded suo motu as additional 7th respondent and the learned Government Pleader appears for the additional respondent.

There will be a direction to the additional 7th respondent DPI, to consider and take a decision on Ext.R5(a) Revision

Petition in accordance with law, if it is already filed and pending before him, with notice to the petitioner and respondents 5 and 6, within a period of one month from the date of receipt of a copy of this Judgment. In case the Revision Petition has not been filed, the 4th respondent AEO, will pass appropriate orders in accordance with law, to ensure that petitioner is appointed in the regular vacancy without any further delay.

K. M. JOSEPH, JUDGE

kbk.